

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN ASSEMBLY JUNE 17, 2013

AMENDED IN SENATE MAY 20, 2013

AMENDED IN SENATE APRIL 10, 2013

**SENATE BILL**

**No. 360**

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**Introduced by Senator Padilla**

February 20, 2013

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An act to amend Section 19100 of, to amend the heading of Article 1 (commencing with Section 19200) of Chapter 3 of Division 19 of, to amend the headings of Chapter 3 (commencing with Section 19200) and Chapter 3.5 (commencing with Section 19260) of Division 19 of, to amend the heading of Division 19 (commencing with Section 19001) of, to amend and renumber Sections 19103, 19200.5, 19202, 19203, 19204, 19207, 19209, 19210, 19211, 19212, 19212.5, 19213, 19214, 19214.5, 19215, 19216, 19217, 19220, 19221, 19222, 19223, 19225, 19226, 19227, 19227.5, 19228, 19229, 19229.5, 19230, 19231, 19232, 19233, 19234, 19234.5, 19235, 19236, 19237, 19238, 19239, 19240, 19241, 19242, 19243, 19244, 19245, 19250, 19251, 19252, 19253, 19254, 19255, 19260, 19261, 19262, 19263, 19264, 19267, 19269, 19270, 19271, 19272, 19273, 19274, and 19275 of, to amend and renumber the headings of Article 2 (commencing with Section 19220), Article 2.5 (commencing with Section 19225), Article 3 (commencing with Section 19230), and Article 4 (commencing with Section 19250) of Chapter 3 of Division 19 of, to amend, renumber, and add Sections 19101, 19102, and 19201 of, to add Sections 19006, 19282, 19283, and 19286 to, to add Article 2 (commencing with Section 19220) to Chapter 3 of Division 19 of, to repeal Sections 19205, 19208, 19265, 19266, and 19268 of, and to repeal and add Section 19206 of, the Elections Code, relating to voting systems.

## LEGISLATIVE COUNSEL'S DIGEST

SB 360, as amended, Padilla. Certification of voting systems.

(1) Existing law establishes various procedures and criteria for the approval by the Secretary of State of voting systems, including ballot marking systems, to be used in elections.

This bill would recast and revise those provisions by changing the term “approval” to the term “certification” and would authorize the Secretary of State to certify, conditionally approve, as specified, or withhold approval of a voting system. The bill would provide that it is the intent of the Legislature that *a local jurisdiction be authorized to use available public funds to research and develop a nonproprietary voting system, as specified, for use in a pilot program or for submission to the Secretary of State, and that the Secretary of State certify all voting systems before they are used in future elections, adopt and publish testing standards, and encourage the development of voting systems that are easy to audit. The bill would require the Secretary of State to adopt and publish voting system standards and regulations, as specified, and would require the Secretary of State to study the performance of the voting systems in use in the state.*

This bill would additionally require the Secretary of State to publish requirements for the approval of state-approved testing agencies, as defined, that are authorized to conduct the testing and examination of voting systems and to approve and publish a list of authorized testing agencies. The bill also would provide that the person, corporation, or public agency applying for certification of a voting system is responsible for all costs associated with the testing of the voting system.

(2) Existing law prohibits the use of a voting system unless it has received the approval of the Secretary of State, as specified.

This bill would provide that a voting system that has been *tested and approved for use on or in all elections by the Secretary of State before January 1, 2014*, would be deemed to be certified or conditionally approved by the Secretary of State and would be authorized for use in elections, *as specified*. The bill would authorize a vendor or proprietor county that has submitted a voting system for federal qualification ~~on or before January 1, 2014~~, *August 1, 2013*, to request approval of the voting system from the Secretary of State, as specified. The bill also would prohibit a jurisdiction from purchasing or contracting for a voting system unless the ~~purchase or contract is conditioned on the certification or conditional approval~~ *voting system has been certified or conditionally*

~~approved by the Secretary of State before final acceptance or deployment, except as specified. The bill would further authorize the Secretary of State to grant conditional approval to a voting system or part of a voting system under specified circumstances.~~

*(3) Existing law provides that a person or corporation owning or being interested in a voting system or a part of a voting system may apply to the Secretary of State to examine it and report on its accuracy and efficiency to fulfill its purpose. As part of its application, existing law requires the vendor of a voting system or the part of a voting system to notify the Secretary of State in writing of any known defect, fault, or failure of the version of the hardware, software, or firmware of the voting system or a part of the voting system submitted, and the Secretary of State is required to notify the United States Election Assistance Commission or its successor entity of the problem as soon as practicable so as to present a reasonably complete description of the problem, as specified.*

*This bill would delete the requirement that the Secretary of State notify the United States Election Assistance Commission or its successor entity of any known defect, fault, or failure of the version of the hardware, software, or firmware of the voting system or a part of the voting system submitted by the applicant.*

*(4) Existing law requires the Secretary of State to provide for a 30-day public review period and conduct a public hearing prior to publishing his or her decision to certify, conditionally approve, or withhold certification of a voting system, part of a voting system, or a ballot marking system. Under existing law, the Secretary of State is required to transmit notice of the hearing at least 30 days prior to the public review period and hearing, as specified.*

*This bill would instead require the Secretary of State to transmit notice of the hearing at least 14 days prior to the public review period and hearing.*

~~(3)~~

*(5) Within 30 days after completing the examination of any voting system, existing law requires the Secretary of State to file a report stating whether the voting system can safely be used, as specified.*

*This bill would instead require the Secretary of State to file a report within 60 days after the completion of the examination of the voting system, as specified.*

*(6) Existing law authorizes a governing board to adopt any kind of voting system, any combination of voting systems, or any combination*

*of a voting system and paper ballots for use at elections, as specified. Provisions of existing law authorize the use of the voting systems at any or all elections held in any county, city, or any of their political subdivisions for voting, registering, and counting votes cast, and prohibit candidates for a single office from being split between voting systems or between a voting system and paper ballots.*

*This bill would delete those provisions.*

~~(4)~~

(7) Existing law authorizes a governing board to provide for the experimental use of a voting system in one or more precincts without formally adopting the system and provides that the experimental use of the system at the election is valid for all purposes as if it were lawfully adopted.

This bill would authorize a governing board to conduct a pilot program for the ~~interim~~ *experimental* use of voting systems, as specified, and would require the Secretary of State to adopt and publish regulations governing voting system pilot programs. No later than 9 months before the election at which a pilot program is proposed to be conducted, the bill would require the governing board to submit to the Secretary of State a plan for the proposed pilot program, and would require the Secretary of State to approve or reject the plan within 3 months of receipt of the plan. *The bill would require votes cast on a voting system during a pilot program, as specified, to be subject to risk-limiting audits, as defined.* Upon completion of the pilot program, the bill would require the governing board to notify the Secretary of State in writing of any defect, fault, or failure in the hardware, software, or firmware of the voting system.

~~(5)~~

(8) Upon examination of a voting system or a ballot marking system, existing law provides that if a report is issued that states that the voting system or ballot marking system can be used, it is deemed approved by the Secretary of State for use at elections.

This bill would delete the above provision and would make conforming changes.

~~(6)~~

(9) The Voting Modernization Bond Act of 2002 authorizes the issuance of bonds in the amount of \$200,000,000 pursuant to the State General Obligation Bond Law for the purpose of assisting counties in the purchase of updated voting systems.

~~This bill would authorize a county to contract and use fund moneys for the development, prototyping, and manufacturing of a voting system that is to be publicly owned and that uses nonproprietary software. The bill would require fund moneys that are used for the development, prototyping, and manufacturing of a voting system to be conditioned on the future certification of the voting system by the Secretary of State, as specified: to contract and pay for research and development of a new voting system that has not been certified or conditionally approved by the Secretary of State, as specified, and for the manufacture of the minimum number of voting system units, as specified.~~

(7)

(10) Existing law prohibits the Secretary of State, on and after January 1, 2005, from approving a direct recording electronic voting system unless the system has received federal qualification and includes an accessible voter verified paper audit trail.

This bill would prohibit a city or county from contracting for or purchasing a direct recording electronic voting system unless the system has been certified by the Secretary of State, and would require all direct recording electronic voting systems in use as of January 1, 2006, to have received federal qualification and include an accessible voter verified paper audit trail, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The heading of Division 19 (commencing with  
2 Section 19001) of the Elections Code is amended to read:

3

4 DIVISION 19. CERTIFICATION OF VOTING SYSTEMS

5

6 SEC. 2. Section 19006 is added to the Elections Code, to read:  
7 19006. ~~(a)~~ It is the intent of the Legislature ~~that all~~ that:

8 (a) All voting systems be certified or conditionally approved  
9 by the Secretary of State, independent of voluntary federal  
10 qualification or certification, before they are used in future elections  
11 to ensure that the voting systems have the ability to meet accuracy,  
12 accessibility, and security standards.

13 (b) ~~It is also the intent of the Legislature that the~~ The Secretary  
14 of State adopt and publish testing standards that meet or exceed

1 federal voluntary standards set by the United States Election  
2 Assistance Commission or its successor agency.

3 ~~(c) It is also the intent of the Legislature that the~~ The Secretary  
4 of State study and encourage the development of voting systems  
5 that use nonproprietary source code and that are easy to audit.

6 *(d) A local jurisdiction may use available public funds to*  
7 *purchase and maintain any certified or conditionally approved*  
8 *voting system or part of a voting system.*

9 *(e) California receive the benefits of the publicly funded*  
10 *development of a nonproprietary voting system in the state.*

11 *(f) A local jurisdiction may use available public funds to*  
12 *research and develop a nonproprietary voting system that uses*  
13 *disclosed source codes, including the manufacture of a limited*  
14 *number of voting system units, for use in a pilot program or for*  
15 *submission to the Secretary of State for certification.*

16 SEC. 3. Section 19100 of the Elections Code is amended to  
17 read:

18 19100. The Secretary of State shall study and adopt regulations  
19 governing the use of voting machines, voting devices, vote  
20 tabulating devices, and ballot marking systems, and shall be  
21 responsible for certifying voting systems for use in this state.

22 SEC. 4. Section 19101 of the Elections Code is amended and  
23 renumbered to read:

24 19103. The Chairperson of the Senate Standing Committee on  
25 Elections and Constitutional Amendments and the Chairperson of  
26 the Assembly Standing Committee on Elections and Redistricting  
27 shall meet with the Secretary of State and assist the Secretary of  
28 State to the extent that the participation is not incompatible with  
29 their positions as Members of the Legislature. For purposes of this  
30 division, the chairpersons of the committees named shall constitute  
31 a joint interim legislative committee on the subject of this chapter  
32 and Chapter 3 (commencing with Section 19200) and shall have  
33 the powers and duties imposed upon those committees by the Joint  
34 Rules of the Senate and Assembly.

35 SEC. 5. Section 19101 is added to the Elections Code, to read:

36 19101. (a) The Secretary of State shall adopt and publish  
37 voting system standards and regulations governing the use of voting  
38 systems. The Secretary of State shall adopt standards that meet or  
39 exceed federal voluntary voting system guidelines set forth by the  
40 United States Election Assistance Commission or its successor

1 agency. Until state standards are adopted, the ~~most recently adopted~~  
2 ~~federal voluntary voting system guidelines~~ *Voluntary Voting System*  
3 *Guidelines Draft Version 1.1, as submitted to the United States*  
4 *Election Assistance Commission on August 31, 2012*, shall be used  
5 as state standards *to the extent that they do not conflict with this*  
6 *code. The Secretary of State may require additional testing to*  
7 *ensure that voting systems meet the requirements of this code.*

8 (b) Voting system standards adopted by the Secretary of State  
9 pursuant to subdivision (a) shall include, but not be limited to, all  
10 of the following requirements:

11 (1) The machine or device and its software shall be suitable for  
12 the purpose for which it is intended.

13 (2) The system shall preserve the secrecy of the ballot.

14 (3) The system shall be safe from fraud or manipulation.

15 (4) The system shall be accessible to voters with disabilities  
16 pursuant to Section 19242 and applicable federal laws.

17 (5) The system shall be accessible to voters who require  
18 assistance in a language other than English if the language is one  
19 in which a ballot or ballot materials are required to be made  
20 available to voters pursuant to Section 14201 and applicable federal  
21 laws.

22 SEC. 6. Section 19102 of the Elections Code is amended and  
23 renumbered to read:

24 19104. The Secretary of State may investigate any alleged  
25 violation of this code or the Secretary of State's regulations with  
26 the power to subpoena all necessary persons and records.

27 SEC. 7. Section 19102 is added to the Elections Code, to read:

28 19102. The Secretary of State shall study the performance of  
29 voting systems in use in the state.

30 SEC. 8. Section 19103 of the Elections Code is amended and  
31 renumbered to read:

32 19212. (a) (1) No later than 10 business days after the  
33 Secretary of State certifies or conditionally approves the use of a  
34 new or updated voting system, the vendor or ~~proprietor~~ county  
35 seeking certification or approval of the voting system shall cause  
36 an exact copy of the approved source code for each component of  
37 the voting system, including complete build and configuration  
38 instructions and related documents for compiling the source code  
39 into object code, to be transferred directly from either the United  
40 States Election Assistance Commission or the voting system testing

1 agency that evaluated the voting system and is approved by the  
2 Secretary of State, and deposited into an approved escrow facility.

3 (2) No later than 10 business days after the Secretary of State  
4 certifies or conditionally approves a new or updated ballot marking  
5 system, the vendor or ~~proprietor~~ county seeking certification or  
6 approval of the ballot marking system shall cause an exact copy  
7 of the approved source code for each component of the ballot  
8 marking system, including complete build and configuration  
9 instructions and related documents for compiling the source code  
10 into object code, to be deposited into an approved escrow facility.

11 (b) The Secretary of State shall adopt regulations relating to all  
12 of the following:

13 (1) The definition of source code components of a voting system  
14 or ballot marking system, including source code for all firmware  
15 and software of the voting system or ballot marking system.  
16 Firmware and software shall include commercial off-the-shelf or  
17 other third-party firmware and software that is available and able  
18 to be disclosed by the vendor or ~~proprietor~~ county seeking  
19 certification or approval of a voting system or ballot marking  
20 system.

21 (2) Specifications for the escrow facility, including security and  
22 environmental specifications necessary for the preservation of the  
23 voting system or ballot marking system source codes.

24 (3) Procedures for submitting voting system or ballot marking  
25 system source codes.

26 (4) Criteria for access to voting system or ballot marking system  
27 source codes.

28 (5) Requirements for the applicant to include in the materials  
29 deposited in escrow build and configuration instructions and  
30 documents so that a neutral third party may create, from the source  
31 codes in escrow, executable object codes identical to the code  
32 installed on certified or conditionally approved voting systems or  
33 ballot marking systems.

34 (c) The Secretary of State shall have reasonable access to the  
35 materials placed in escrow, under any of the following  
36 circumstances:

37 (1) In the course of an investigation or prosecution regarding  
38 vote counting or ballot marking equipment or procedures.



(2) Upon a finding by the Secretary of State that an escrow facility or escrow company is unable or unwilling to maintain materials in escrow in compliance with this section.

(3) In order to fulfill the provisions of this chapter related to the examination and certification or conditional approval of voting systems or ballot marking systems.

(4) In order to verify that the software on a voting system is identical to the certified or conditionally approved version.

(5) For any other purpose deemed necessary to fulfill the provisions of this code or Section 12172.5 of the Government Code.

(d) The Secretary of State may seek injunctive relief requiring the elections officials, approved escrow facility, or any vendor or manufacturer of a voting system or part of a voting system to comply with this section and related regulations. Venue for a proceeding under this section shall be exclusively in Sacramento County.

(e) This section applies to all elections.

SEC. 9. The heading of Chapter 3 (commencing with Section 19200) of Division 19 of the Elections Code is amended to read:

CHAPTER 3. CERTIFICATION OF VOTING SYSTEMS

SEC. 10. The heading of Article 1 (commencing with Section 19200) of Chapter 3 of Division 19 of the Elections Code is amended to read:

Article 1. Procedures for Certification of Voting Systems

SEC. 11. Section 19200.5 of the Elections Code is amended and renumbered to read:

19204. The Secretary of State shall not certify or conditionally approve any voting system that includes features that permit a voter to produce, and leave the polling place with, a copy or facsimile of the ballot cast by the voter at that polling place.

SEC. 12. Section 19201 of the Elections Code is amended and renumbered to read:

19202. (a) ~~Except as authorized by Section 19209~~, a voting system, in whole or in part, shall not be used unless it has been

1 certified or conditionally approved by the Secretary of State prior  
2 to any election at which it is to be used.

3 (b) A voting system that has been *tested and* approved for use  
4 ~~on or in all elections by the Secretary of State~~ before January 1,  
5 2014, shall be deemed certified or conditionally approved by the  
6 Secretary of State and may be used in an election *subject to any*  
7 *conditions placed on the use of the voting system by the Secretary*  
8 *of State before January 1, 2014, including conditions imposed in*  
9 *the reapproval documents issued by the Secretary of State in 2007*  
10 *and 2008 following the Top-to-Bottom Review, and its subsequent*  
11 *revisions. The voting systems described in this subdivision shall*  
12 *remain subject to review and decertification by the Secretary of*  
13 *State at any time pursuant to Section 19232.*

14 (c) A vendor or ~~proprietor~~ county that has submitted a voting  
15 system for federal qualification ~~on or before January 1, 2014;~~  
16 *August 1, 2013*, upon obtaining federal qualification *before January*  
17 *1, 2015*, may request approval of the voting system from the  
18 Secretary of State based on the examination and review  
19 requirements in place before January 1, 2014.

20 ~~(d) A jurisdiction shall not purchase or contract for a voting~~  
21 ~~system, in whole or in part, unless the purchase or contract is~~  
22 ~~conditioned on the certification or conditional approval by the~~  
23 ~~Secretary of State before final acceptance or deployment.~~

24 *(d) A jurisdiction shall not purchase or contract for a voting*  
25 *system unless it has been certified or conditionally approved by*  
26 *the Secretary of State.*

27 (e) Notwithstanding subdivision (d), a *local* jurisdiction may  
28 ~~purchase, or contract for the development of, a voting system that~~  
29 ~~uses open and nonproprietary software, including a prototype or~~  
30 ~~prototypes of all or any part of the new voting system, without~~  
31 ~~obtaining prior certification or conditional approval by the~~  
32 ~~Secretary of State. contract and pay for the following:~~

33 *(1) Research and development of a new voting system that has*  
34 *not been certified or conditionally approved by the Secretary of*  
35 *State and uses only nonproprietary software and firmware with*  
36 *disclosed source code, except for unmodified commercial*  
37 *off-the-shelf software and firmware, as defined in paragraph (1)*  
38 *of subdivision (a) of Section 19209.*

39 *(2) Manufacture of the minimum number of voting system units*  
40 *reasonably necessary for either of the following purposes:*

1 (A) To test and seek certification or conditional approval of the  
2 voting system pursuant to Sections 19210 to 19214, inclusive.

3 (B) To test and demonstrate the capabilities of the voting system  
4 in a pilot program pursuant to paragraph (2) of subdivision (b)  
5 of, and subdivision (c) of, Section 19209.

6 SEC. 13. Section 19201 is added to the Elections Code, to read:

7 19201. (a) The Secretary of State may grant conditional  
8 approval to a voting system or part of a voting system under any  
9 either of the following circumstances:

10 (1) A voting system or part of a voting system was decertified  
11 as a result of a review by the Secretary of State pursuant to Section  
12 19232.

13 (2) A certified voting system or part of that voting system is  
14 modified to comply with voting system standards or changes in  
15 statute.

16 ~~(3) A jurisdiction intends to pilot the implementation of a~~  
17 ~~publicly owned voting system using nonproprietary software~~  
18 ~~pursuant to Section 19209.~~

19 ~~(b) A voting system or part of a voting system that receives~~  
20 ~~conditional approval may be used in any election if it meets the~~  
21 ~~conditions for use as set forth by the Secretary of State.~~

22 ~~(e)~~

23 (b) The Secretary of State may withdraw conditional approval  
24 at any time pursuant to Section 19232.

25 SEC. 14. Section 19202 of the Elections Code is amended and  
26 renumbered to read:

27 19210. (a) A person, corporation, or public agency owning or  
28 having an interest in the sale or acquisition of a voting system or  
29 a part of a voting system may apply to the Secretary of State for  
30 certification that includes testing and examination of the applicant's  
31 system by a state-approved testing agency or expert technicians  
32 and a report on the findings, which shall include the accuracy and  
33 efficiency of the voting system. As part of its application, the  
34 applicant shall notify the Secretary of State in writing of any known  
35 defect, fault, or failure of the version of the hardware, software,  
36 or firmware of the voting system or a part of the voting system  
37 submitted. The Secretary of State shall not begin his or her  
38 certification process until he or she receives a completed  
39 application. The applicant shall also notify the Secretary of State  
40 in writing of any defect, fault, or failure of the version of the

1 hardware, software, or firmware of the voting system or a part of  
2 the voting system submitted that is discovered after the application  
3 is submitted and before the Secretary of State submits the report  
4 required by Section 19213. The Secretary of State shall complete  
5 his or her certification process without undue delay.

6 (b) The Secretary of State shall publish and make publicly  
7 available on his or her Internet Web site a quarterly report of  
8 regulatory activities related to voting systems.

9 ~~(c) After receiving an applicant's written notification of a~~  
10 ~~defect, fault, or failure, the Secretary of State shall notify the United~~  
11 ~~States Election Assistance Commission or its successor entity of~~  
12 ~~the problem as soon as practicable so as to present a reasonably~~  
13 ~~complete description of the problem. The Secretary of State shall~~  
14 ~~subsequently submit a report regarding the problem to the United~~  
15 ~~States Election Assistance Commission or its successor entity. The~~  
16 ~~report shall include any report regarding the problem submitted~~  
17 ~~to the Secretary of State by the applicant.~~

18 ~~-(d)~~

19 (c) As used in this article:

20 (1) "Defect" means any flaw in the hardware or documentation  
21 of a ~~certified or conditionally approved~~ voting system that could  
22 result in a state of unfitness for use or nonconformance to the  
23 manufacturer's specifications or applicable law.

24 (2) "Failure" means a discrepancy between the external results  
25 of the operation of any software or firmware in a ~~certified or~~  
26 ~~conditionally approved~~ voting system and the manufacturer's  
27 product requirements for that software or firmware or applicable  
28 law.

29 (3) "Fault" means a step, process, or data definition in any  
30 software or firmware in a ~~certified or conditionally approved~~ voting  
31 system that is incorrect under the manufacturer's program  
32 specification or applicable law.

33 SEC. 15. Section 19203 of the Elections Code is amended and  
34 renumbered to read:

35 19223. The Secretary of State shall use a state-approved testing  
36 agency or expert technicians to examine and test voting systems  
37 or parts of voting systems proposed for use or sale in this state.  
38 He or she shall furnish a complete report of the findings of the  
39 examination and testing to the Governor and the Attorney General.

1 SEC. 16. Section 19204 of the Elections Code is amended and  
2 renumbered to read:

3 19211. (a) Prior to publishing his or her decision to certify,  
4 conditionally approve, or withhold certification of a voting system  
5 or part of a voting system, the Secretary of State shall provide for  
6 a 30-day public review period and conduct a public hearing to give  
7 persons interested an opportunity to review testing and examination  
8 reports and express their views for or against certification or  
9 conditional approval of the voting system.

10 (b) The Secretary of State shall give notice of the public review  
11 period and hearing in the manner prescribed in Section 6064 of  
12 the Government Code in a newspaper of general circulation  
13 published in Sacramento County. The Secretary of State shall also  
14 provide notice of the hearing on his or her Internet Web site. The  
15 Secretary of State shall transmit written notice of the hearing, at  
16 least ~~30~~ 14 days prior to the public review period and hearing, to  
17 each county elections official, to any person that the Secretary of  
18 State believes will be interested in the public review period and  
19 hearing, and to any person who requests, in writing, notice of the  
20 public review period and hearing.

21 (c) The decision of the Secretary of State to certify, conditionally  
22 approve, or withhold certification of a voting system or part of a  
23 voting system shall be in writing and shall state the findings of the  
24 Secretary of State. The decision shall be open to public inspection.

25 SEC. 17. Section 19205 of the Elections Code is repealed.

26 SEC. 18. Section 19206 of the Elections Code is repealed.

27 SEC. 19. Section 19206 is added to the Elections Code, to read:

28 19206. ~~If~~ *Except as authorized by Section 19209, both of the*  
29 *following apply: more*

30 (a) *If more* than one voting system is used to count ballots, the  
31 names of candidates shall, insofar as possible, be placed on the  
32 primary voting system. ~~If~~

33 (b) *If more* than one voting system or a combination of a voting  
34 system and paper ballots is used to count ballots, a single ballot  
35 measure or the candidates for a single office may not be split  
36 between voting systems or between a voting system and paper  
37 ballots.

38 SEC. 20. Section 19207 of the Elections Code is amended and  
39 renumbered to read:

19213. Within 60 days after the completion of the examination of a voting system, the Secretary of State shall make publicly available a report stating whether the voting system has been certified or conditionally approved, or whether certification has been withheld. The report shall also contain a written or printed description and drawings and photographs that clearly identify the machine or device and its mechanical operation.

SEC. 21. Section 19208 of the Elections Code is repealed.

SEC. 22. Section 19209 of the Elections Code is amended and renumbered to read:

19214. Within 10 days after issuing and filing a certification decision and associated testing reports, the Secretary of State shall make available to the public a full and complete copy of the certification report and all associated documentation, except that portions of the report or documentation that contain information that the Secretary of State determines to be confidential or proprietary shall not be made publicly available. The Secretary of State shall also notify the board of supervisors and elections official of each county of the availability of the report and associated documentation.

SEC. 23. Section 19210 of the Elections Code is amended and renumbered to read:

19207. The governing board may adopt for use at elections any kind of voting system, any combination of voting systems, or any combination of a voting system and paper ballots, provided that the voting system or systems involved have been certified or conditionally approved by the Secretary of State or specifically authorized by law pursuant to Section ~~19201~~ 19209. ~~The voting system or systems may be used at any or all elections held in any county, city, or any of their political subdivisions for voting, registering, and counting votes cast. If more than one voting system or a combination of a voting system and paper ballots is used at an election, the candidates for a single office may not be split between voting systems or between a voting system and paper ballots.~~

SEC. 24. Section 19211 of the Elections Code is amended and renumbered to read:

19209. (a) *For purposes of this section, the following terms have the following meanings:*

1 (1) “Commercial off-the-shelf” means mass-produced, readily  
2 available hardware devices, including card readers, printers, or  
3 personal computers, and their firmware or software products,  
4 including operating systems, programming language compilers,  
5 or database management systems.

6 (2) “Incorrect in part” means a full manual tally of the votes  
7 cast on the pilot system would reveal rates of error in the pilot  
8 system tally that, if extrapolated to the entire contest, would alter  
9 the electoral outcome.

10 (3) “Partial risk-limiting audit” means a procedure that  
11 guarantees a large minimum chance of a full manual tally of the  
12 votes cast on the pilot system if the electoral outcome is incorrect  
13 in part.

14 (4) “Risk-limiting audit” means a procedure that ensures a  
15 large, predetermined minimum chance of requiring a full manual  
16 tally whenever a full manual tally would show an electoral outcome  
17 that differs from the outcome reported by the voting system for the  
18 audited contest.

19 (b) The governing board, without formally adopting a voting  
20 system, may provide for the ~~interim~~ experimental use of ~~a the~~  
21 voting system in a pilot program held in one or more precincts at  
22 ~~an a single election in one or more precincts~~; or, in the case of a  
23 special election, the special primary election and the special  
24 general election, if the voting system complies with either of the  
25 following:

26 (1) The voting system is certified or conditionally approved  
27 prior to its experimental use.

28 (2) The voting system meets all of the following requirements:

29 (A) Uses only software and firmware with disclosed source  
30 code, except for unmodified commercial off-the-shelf software and  
31 firmware.

32 (B) Meets the requirements of subdivision (b) of Section 19101.

33 (C) Meets the requirements of the regulations adopted by the  
34 Secretary of State pursuant to subdivision (g).

35 (D) Implements risk-limiting audits.

36 ~~(b) A voting system that is to be used in a pilot program shall~~  
37 ~~be certified for use in California. If a voting system is publicly~~  
38 ~~owned and uses nonproprietary software, it may be used in a pilot~~  
39 ~~program with conditional approval from the Secretary of State~~  
40 ~~prior to full certification.~~

1 ~~(e) A voting system that is used at an election pursuant to this~~  
2 ~~section is valid for all purposes as if it were lawfully adopted and~~  
3 ~~certified.~~

4 *(c) A voting system that meets all of the requirements of*  
5 *paragraph (2) of subdivision (b) need not be certified or*  
6 *conditionally approved prior to its experimental use in a pilot*  
7 *program if the number of voting system units deployed in the pilot*  
8 *program is limited to the number necessary to test and demonstrate*  
9 *the capabilities of the voting system in a limited number of*  
10 *precincts or locations, including a prudent number of reserve units*  
11 *to ensure that sufficient working units will be available to conduct*  
12 *the pilot program. In no event shall the number of voting system*  
13 *units exceed 50 percent of the estimated number of units that would*  
14 *be required for full deployment of the voting system at every polling*  
15 *place and early voting site in a statewide election throughout the*  
16 *jurisdiction. Capabilities that may be taken into account in*  
17 *determining the number of voting system units reasonably*  
18 *necessary to test and demonstrate the capabilities of the voting*  
19 *system include, but are not limited to, all of the following:*

20 *(1) The capability of the voting system to accommodate voting*  
21 *in all languages in which the jurisdiction is required to provide*  
22 *ballots under applicable state and federal laws.*

23 *(2) The capability of the voting system to accommodate voting*  
24 *by persons with a broad range of physical and cognitive*  
25 *disabilities, as required by applicable state and federal laws.*

26 *(3) The current and projected number of voting-eligible*  
27 *individuals in the jurisdiction.*

28 *(4) The geography and distribution of the population in the*  
29 *jurisdiction.*

30 *(d) No later than nine months before the election at which the*  
31 *pilot program of a voting system is proposed to be conducted, the*  
32 *governing board shall submit to the Secretary of State a plan for*  
33 *the pilot program. The Secretary of State shall approve or reject*  
34 *the plan no later than three months after receipt of the plan.*

35 *(e) The votes cast on a voting system during a pilot program*  
36 *pursuant to subdivision (b) shall be subject to risk-limiting audits*  
37 ~~*pursuant to Section 19233. audits.*~~

38 *(1) For each contest conducted entirely on the pilot voting*  
39 *system, the jurisdiction conducting the pilot program shall conduct*  
40 *a risk-limiting audit with at least a 90 percent chance of requiring*



1 *a full manual tally of the contest whenever a full manual tally*  
2 *would show an outcome that differs from the outcome reported by*  
3 *the pilot voting system.*

4 *(2) For each contest conducted partially on the pilot voting*  
5 *system, the jurisdiction conducting the pilot program shall conduct*  
6 *a partial risk-limiting audit of the portion of the contest in which*  
7 *the voters cast their votes on the pilot voting system, with at least*  
8 *a 90 percent chance of requiring a full manual tally of all votes*  
9 *cast using the pilot voting system whenever the outcome is incorrect*  
10 *in part.*

11 *(3) (A) If a risk-limiting audit of a contest leads to a full manual*  
12 *tally of all of the ballots cast in the contest, then the contest*  
13 *outcome according to that manual tally shall become the official*  
14 *result.*

15 *(B) If a partial risk-limiting audit of a contest leads to a full*  
16 *manual tally of the ballots cast using the pilot voting system, the*  
17 *vote counts according to that manual tally shall replace the vote*  
18 *counts reported by the pilot voting system for the purpose of*  
19 *determining the official contest results.*

20 *(4) Risk-limiting audit procedures shall comply with all other*  
21 *requirements in regulations adopted by the Secretary of State*  
22 *pursuant to subdivision (g).*

23 *(f) Upon completion of the pilot program, the governing board*  
24 *shall notify the Secretary of State in writing of any defect, fault,*  
25 *or failure of the hardware, software, or firmware of the voting*  
26 *system or a part of the voting system.*

27 *(g) A voting system pilot program shall not be conducted in a*  
28 *legally binding election without the prior approval of the Secretary*  
29 *of State. The Secretary of State shall adopt and publish regulations*  
30 *governing voting system pilot programs.*

31 SEC. 25. Section 19212 of the Elections Code is amended and  
32 renumbered to read:

33 19208. The governing board may provide for the payment of  
34 the cost of the voting system equipment in any manner and by any  
35 method as it deems best for local interests, and also may for that  
36 purpose issue bonds, certificates of indebtedness, or other  
37 obligations that shall be a charge on the county or city. The bonds,  
38 certificates, or other obligations may be issued with or without  
39 interest, payable at any time as the authorities may determine, but  
40 shall not be issued or sold at less than par. The governing board

1 may enter into lease agreements or lease-purchase agreements for  
2 the use of equipment.

3 SEC. 26. Section 19212.5 of the Elections Code is amended  
4 and renumbered to read:

5 19215. (a) If a voting system or a part of a voting system has  
6 been certified or conditionally approved by the Secretary of State  
7 *or has been federally qualified*, the vendor ~~or proprietor county~~;  
8 *or*, in cases where the system is publicly owned, *the jurisdiction*  
9 shall notify the Secretary of State and all local elections officials  
10 who use the system in writing of any defect, fault, or failure of the  
11 hardware, software, or firmware of the voting system or a part of  
12 the voting system within 30 calendar days after the vendor learns  
13 of the defect, fault, or failure.

14 (b) After receiving written notification of a defect, fault, or  
15 failure pursuant to subdivision (a), the Secretary of State shall  
16 notify the United States Election Assistance Commission or its  
17 successor agency of the problem as soon as practicable so as to  
18 present a reasonably complete description of the problem. The  
19 Secretary of State shall subsequently submit a report regarding the  
20 problem to the United States Election Assistance Commission or  
21 its successor agency. The report shall include any report regarding  
22 the problem submitted to the Secretary of State.

23 SEC. 27. Section 19213 of the Elections Code is amended and  
24 renumbered to read:

25 19216. If a voting system or a part of a voting system has been  
26 certified or conditionally approved by the Secretary of State, it  
27 shall not be changed or modified until the Secretary of State has  
28 been notified in writing and has determined that the change or  
29 modification does not impair its accuracy and efficiency sufficient  
30 to require a reexamination and recertification, or conditional  
31 approval, pursuant to this article. The Secretary of State may adopt  
32 rules and regulations governing the procedures to be followed in  
33 making his or her determination as to whether the change or  
34 modification impairs accuracy or efficiency.

35 SEC. 28. Section 19214 of the Elections Code is amended and  
36 renumbered to read:

37 19217. The Secretary of State may seek injunctive and  
38 administrative relief if a voting system or a part of a voting system  
39 has been compromised by the addition or deletion of hardware,  
40 software, or firmware without prior approval or is defective due

1 to a known hardware, software, or firmware defect, fault, or failure  
2 that has not been disclosed pursuant to Section 19210 or 19215.

3 SEC. 29. Section 19214.5 of the Elections Code is amended  
4 and renumbered to read:

5 19218. (a) The Secretary of State may seek all of the following  
6 relief for an unauthorized change in hardware, software, or  
7 firmware in a voting system certified or conditionally approved  
8 in California:

9 (1) A civil penalty from the offending party or parties, not to  
10 exceed ten thousand dollars (\$10,000) per violation. For purposes  
11 of this subdivision, each voting system component found to contain  
12 the unauthorized hardware, software, or firmware shall be  
13 considered a separate violation. A penalty imposed pursuant to  
14 this subdivision shall be apportioned 50 percent to the county in  
15 which the violation occurred, if applicable, and 50 percent to the  
16 office of the Secretary of State for purposes of bolstering voting  
17 systems security efforts.

18 (2) Immediate commencement of proceedings to withdraw  
19 certification or conditional approval for the voting system in  
20 question.

21 (3) Prohibiting the manufacturer or vendor of a voting system  
22 from doing elections-related business in the state for one, two, or  
23 three years.

24 (4) Refund of all moneys paid by a local agency for a voting  
25 system or a part of a voting system that is compromised by an  
26 unauthorized change or modification, whether or not the voting  
27 system has been used in an election.

28 (5) Any other remedial actions authorized by law to prevent  
29 unjust enrichment of the offending party.

30 (b) (1) The Secretary of State may seek all of the following  
31 relief for a known but undisclosed defect, fault, or failure in a  
32 voting system or part of a voting system certified or conditionally  
33 approved in California:

34 (A) Refund of all moneys paid by a local agency for a voting  
35 system or part of a voting system that is defective due to a known  
36 but undisclosed defect, fault, or failure, whether or not the voting  
37 system has been used in an election.

38 (B) A civil penalty from the offending party or parties, not to  
39 exceed fifty thousand dollars (\$50,000) per violation. For purposes  
40 of this subdivision, each defect, fault, or failure shall be considered

1 a separate violation. A defect, fault, or failure constitutes a single  
2 violation regardless of the number of voting system units in which  
3 the defect, fault, or failure is found.

4 (C) In addition to any other penalties or remedies established  
5 by this section, the offending party or parties shall be liable in the  
6 amount of one thousand dollars (\$1,000) per day after the  
7 applicable deadline established in Section 19215 until the required  
8 disclosure is filed with the Secretary of State.

9 (2) A penalty imposed pursuant to subparagraph (B) or (C) of  
10 paragraph (1) shall be deposited in the General Fund.

11 (c) Before seeking any measure of relief under this section, the  
12 Secretary of State shall hold a public hearing. The Secretary of  
13 State shall give notice of the hearing in the manner prescribed by  
14 Section 6064 of the Government Code in a newspaper of general  
15 circulation published in Sacramento County. The Secretary of  
16 State also shall transmit written notice of the hearing, at least 30  
17 days prior to the hearing, to each county elections official, the  
18 offending party or parties, a person that the Secretary of State  
19 believes will be interested in the hearing, and a person who  
20 requests, in writing, notice of the hearing.

21 (d) The decision of the Secretary of State to seek relief under  
22 this section shall be in writing and state his or her findings. The  
23 decision shall be open to public inspection.

24 SEC. 30. Section 19215 of the Elections Code is amended and  
25 renumbered to read:

26 19219. (a) The Secretary of State may seek injunctive relief  
27 requiring an elections official, or any vendor or manufacturer of  
28 a voting machine, voting system, or vote tabulating device, to  
29 comply with the requirements of this code, the regulations of the  
30 Secretary of State, and the specifications for voting machines,  
31 voting devices, vote tabulating devices, and any software used for  
32 each, including the programs and procedures for vote tabulating  
33 and testing.

34 (b) Venue for a proceeding under this section shall be  
35 exclusively in Sacramento County.

36 SEC. 31. Section 19216 of the Elections Code is amended and  
37 renumbered to read:

38 19203. The Secretary of State shall not certify or conditionally  
39 approve a voting system or a part of a voting system that uses  
40 paper ballots unless the paper used for the ballots is of sufficient

1 quality that it maintains its integrity and readability throughout  
2 the retention period specified in Chapter 4 (commencing with  
3 Section 17300) of Division 17.

4 SEC. 32. Section 19217 of the Elections Code is amended and  
5 renumbered to read:

6 19205. A voting system shall comply with all of the following:

7 (a) No part of the voting system shall be connected to the  
8 Internet at any time.

9 (b) No part of the voting system shall electronically receive or  
10 transmit election data through an exterior communication network,  
11 including the public telephone system, if the communication  
12 originates from or terminates at a polling place, satellite location,  
13 or counting center.

14 (c) No part of the voting system shall receive or transmit  
15 wireless communications or wireless data transfers.

16 SEC. 33. The heading of Article 2 (commencing with Section  
17 19220) of Chapter 3 of Division 19 of the Elections Code is  
18 amended and renumbered to read:

19  
20 Article 3. Inspection of Certified and Conditionally Approved  
21 Voting Systems  
22

23 SEC. 34. Section 19220 of the Elections Code is amended and  
24 renumbered to read:

25 19230. The elections official of any county or city using a  
26 voting system shall inspect the machines or devices at least once  
27 every two years to determine their accuracy. Any county or city  
28 using leased or rented equipment shall determine if the equipment  
29 has been inspected for accuracy within the last two years before  
30 using it for any election. The inspection shall be made in  
31 accordance with regulations adopted and promulgated by the  
32 Secretary of State. The elections official shall certify the results  
33 of the inspection to the Secretary of State.

34 SEC. 35. Article 2 (commencing with Section 19220) is added  
35 to Chapter 3 of Division 19 of the Elections Code, to read:

36  
37 Article 2. Voting System Testing Agencies  
38

39 19220. For purposes of this division, “state-approved testing  
40 agency” means a person or entity that is authorized by the Secretary

1 of State to conduct the testing and examination of a voting system  
2 in connection with certification or conditional approval of the  
3 voting system pursuant to this division.

4 19221. The Secretary of State shall do all of the following:

5 (a) Publish requirements for the approval of state-approved  
6 testing agencies that are authorized to conduct the testing and  
7 examination of voting systems. Until the requirements are  
8 published, federally accredited voting system laboratories shall be  
9 used to conduct testing and examination.

10 (b) Approve and publish a list of authorized state-approved  
11 testing agencies.

12 19222. The person, corporation, or public agency applying for  
13 certification of a voting system is responsible for all costs  
14 associated with the testing of the voting system.

15 19223. The Secretary of State may contract with one or more  
16 expert technicians to assist with the certification of a voting system,  
17 including testing and examination of the voting system.

18 SEC. 36. Section 19221 of the Elections Code is amended and  
19 renumbered to read:

20 19231. (a) If the Secretary of State has reason to believe that  
21 a local inspection of equipment is not adequate, he or she may  
22 cause the equipment to be reexamined, at any time prior to six  
23 months before a statewide election, to ensure that the voting system  
24 or parts of the voting system perform to adopted standards and  
25 tabulate votes accurately.

26 (b) For the purpose of reexamining voting equipment, the  
27 Secretary of State may use state-approved testing agencies or expert  
28 technicians at the cost of the elections official.

29 (c) The Secretary of State shall furnish a complete report of the  
30 findings to the Governor, to the Attorney General, to each county  
31 elections official, to the chairpersons of the elections committees  
32 of the Assembly and Senate, and to the manufacturer of the  
33 equipment.

34 SEC. 37. Section 19222 of the Elections Code is amended and  
35 renumbered to read:

36 19232. The Secretary of State shall review voting systems  
37 periodically to determine if they are defective, obsolete, or  
38 otherwise unacceptable. The Secretary of State has the right to  
39 withdraw his or her certification or conditional approval previously  
40 granted under this chapter of any voting system or part of a voting

1 system should it be defective or prove unacceptable after such  
2 review. Six months' notice shall be given before withdrawing  
3 certification or conditional approval unless the Secretary of State  
4 for good cause shown makes a determination that a shorter notice  
5 period is necessary. Any withdrawal by the Secretary of State of  
6 his or her previous certification or conditional approval of a voting  
7 system or part of a voting system shall not be effective as to any  
8 election conducted within six months of that withdrawal.

9 SEC. 38. Section 19223 of the Elections Code is amended and  
10 renumbered to read:

11 19233. The Secretary of State shall conduct random audits of  
12 the software installed on direct recording electronic voting systems,  
13 as defined in Section 19271, to ensure that the installed software  
14 is identical to the software that has been approved for use on that  
15 voting system. The Secretary of State shall take steps to ensure  
16 that the process for conducting random audits does not intentionally  
17 cause a direct recording electronic voting system to become more  
18 vulnerable to any unauthorized changes to the software that has  
19 been approved for its use.

20 SEC. 39. The heading of Article 2.5 (commencing with Section  
21 19225) of Chapter 3 of Division 19 of the Elections Code is  
22 amended and renumbered to read:

23  
24 Article 4. Accessible Voting Systems  
25

26 SEC. 40. Section 19225 of the Elections Code is amended and  
27 renumbered to read:

28 19240. ~~The Legislature finds and declares as follows:~~*It is the*  
29 *intent of the Legislature that California voting system standards*  
30 *and elections comply with the provisions of the federal Help*  
31 *America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.) that*  
32 *require voting systems be accessible for individuals with*  
33 *disabilities, including nonvisual accessibility for the blind and*  
34 *visually impaired, in a manner that provides the same opportunity*  
35 *for access and participation, including privacy and independence,*  
36 *as provided to other voters who are not disabled.*

37 ~~(a) Microchip and digital technologies are increasingly changing~~  
38 ~~the way Americans vote.~~

39 ~~(b) State and political subdivisions are replacing antiquated~~  
40 ~~voting methods and machines with computer and electronic-based~~

1 ~~voting systems, but nonvisual access, whether by speech, braille,~~  
2 ~~or other appropriate means, is often overlooked in certifying and~~  
3 ~~purchasing the latest voting technology.~~

4 ~~(e) Voting technology and systems that allow the voter to access~~  
5 ~~and select information solely through a visual means are a barrier~~  
6 ~~to access by individuals who are blind or visually impaired, thereby~~  
7 ~~discouraging them from exercising the right to vote, the most~~  
8 ~~fundamental right of citizenship in a free and democratic society.~~

9 ~~(d) Software and hardware adaptations have been created so~~  
10 ~~that voters can interact with voting technology and systems through~~  
11 ~~both visual and nonvisual means allowing blind and visually~~  
12 ~~impaired people to cast a secret ballot and independently verify~~  
13 ~~their vote.~~

14 ~~(e) In promoting full participation in the electoral process, the~~  
15 ~~goals of the state and its political subdivisions must recognize the~~  
16 ~~incontrovertible right of all citizens regardless of blindness or~~  
17 ~~visual impairment to vote.~~

18 ~~(f) This right must include the opportunity for individuals who~~  
19 ~~are blind or visually impaired to cast and verify their ballots~~  
20 ~~independently.~~

21 SEC. 41. Section 19226 of the Elections Code is amended and  
22 renumbered to read:

23 19241. As used in this article:

24 (a) “Access” means the ability to receive, use, select, and  
25 manipulate data and operate controls included in voting technology  
26 and systems.

27 (b) “Nonvisual” means synthesized speech, braille, and other  
28 output methods that do not require sight.

29 SEC. 42. Section 19227 of the Elections Code is amended and  
30 renumbered to read:

31 19242. (a) The Secretary of State shall adopt and publish rules  
32 and regulations governing any voting technology and systems used  
33 by the state or any political subdivision that provide ~~blind and~~  
34 ~~visually impaired individuals with access that is equivalent to that~~  
35 ~~provided to individuals who are not blind or visually impaired,~~  
36 ~~including the ability for the voter to cast and verify all selections~~  
37 ~~made by both visual and nonvisual means~~ *voters with disabilities*  
38 *the access required under the federal Help America Vote Act of*  
39 *2002 (42 U.S.C. Sec. 15301 et seq.).*



1 ~~(b) State voting system standards shall require voting systems~~  
2 ~~to provide blind and visually impaired individuals with access that~~  
3 ~~is equivalent to that provided to individuals who are not blind or~~  
4 ~~visually impaired.~~

5 ~~-(e)~~

6 *(b) At each polling place, at least one voting unit certified or*  
7 *conditionally approved by the Secretary of State shall provide*  
8 ~~access to individuals with disabilities, including nonvisual~~  
9 ~~accessibility for individuals who are blind or visually impaired~~  
10 ~~and accessibility for individuals who have other disabilities as set~~  
11 ~~forth by the federal Help America Vote Act of 2002 (42 U.S.C.~~  
12 ~~Sec. 15301 et seq.) voters with disabilities the access required~~  
13 ~~under the federal Help America Vote Act of 2002 (42 U.S.C. Sec.~~  
14 ~~15301 et seq.).~~

15 ~~-(d)~~

16 *(c) A local agency is not required to comply with subdivision*  
17 ~~(e) (b) in an election in which a candidate for federal office does~~  
18 ~~not appear on the ballot unless sufficient funds are available to~~  
19 ~~implement that provision. Funds received from the proceeds of~~  
20 ~~the Voting Modernization Bond Act of 2002 (Article 5~~  
21 ~~(commencing with Section 19250)), from federal funds made~~  
22 ~~available to purchase new voting systems, or from any other source~~  
23 ~~except the General Fund, shall be used for that purpose.~~

24 SEC. 43. Section 19227.5 of the Elections Code is amended  
25 and renumbered to read:

26 19243. In requiring ~~nonvisual~~ *access for voters with disabilities*  
27 *pursuant to this article, the Secretary of State shall obtain*  
28 *recommendations from representatives of blind consumer*  
29 *organizations, experts in accessible software and hardware design,*  
30 *and any other individual or organization the Secretary of State*  
31 *determines to be appropriate.*

32 SEC. 44. Section 19228 of the Elections Code is amended and  
33 renumbered to read:

34 19244. Compliance with this article in regard to voting  
35 technology and systems purchased prior to the effective date of  
36 this article shall be achieved at the time of procurement of an  
37 upgrade or replacement of existing voting equipment or systems.

38 SEC. 45. Section 19229 of the Elections Code is amended and  
39 renumbered to read:

1 19245. (a) A person injured by a violation of this article may  
2 maintain an action for injunctive relief to enforce this article.

3 (b) An action for injunctive relief shall be commenced within  
4 four years after the cause of action accrues.

5 (c) For purposes of this section, a cause of action for a  
6 continuing violation accrues at the time of the latest violation.

7 SEC. 46. Section 19229.5 of the Elections Code is amended  
8 and renumbered to read:

9 19246. This article does not apply to voting by vote by mail  
10 ballot.

11 SEC. 47. The heading of Article 3 (commencing with Section  
12 19230) of Chapter 3 of Division 19 of the Elections Code is  
13 amended and renumbered to read:

14  
15 Article 5. Voting Modernization Bond Act of 2002  
16 (Shelley-Hertzberg Act)  
17

18 SEC. 48. Section 19230 of the Elections Code is amended and  
19 renumbered to read:

20 19250. This article shall be known and may be cited as the  
21 Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act).

22 SEC. 49. Section 19231 of the Elections Code is amended and  
23 renumbered to read:

24 19251. The State General Obligation Bond Law (Chapter 4  
25 (commencing with Section 16720) of Part 3 of Division 4 of Title  
26 2 of the Government Code), except as otherwise provided herein,  
27 is adopted for the purpose of the issuance, sale, and repayment of,  
28 and otherwise providing with respect to, the bonds authorized to  
29 be issued by this article, and the provisions of that law are included  
30 in this article as though set out in full.

31 SEC. 50. Section 19232 of the Elections Code is amended and  
32 renumbered to read:

33 19252. As used in this article:

34 (a) “Board” means the Voting Modernization Board, established  
35 pursuant to Section 19256.

36 (b) “Bond” means a state general obligation bond issued  
37 pursuant to this article adopting the provisions of the State General  
38 Obligation Bond Law.

1 (c) “Bond act” means this article authorizing the issuance of  
2 state general obligation bonds and adopting the State General  
3 Obligation Bond Law by reference.

4 (d) “Committee” means the Voting Modernization Finance  
5 Committee, established pursuant to Section 19253.

6 (e) “Fund” means the Voting Modernization Fund, created  
7 pursuant to subdivision (b) of Section 19254.

8 (f) “Voting system” means any voting machine, voting device,  
9 or vote tabulating device that does not use prescored punch card  
10 ballots.

11 SEC. 51. Section 19233 of the Elections Code is amended and  
12 renumbered to read:

13 19253. (a) The Voting Modernization Finance Committee is  
14 hereby established for the purpose of authorizing the issuance and  
15 sale, pursuant to the State General Obligation Bond Law, of the  
16 bonds authorized by this article.

17 (b) The committee consists of the Controller, the Director of  
18 Finance, and the Treasurer, or their designated representatives, all  
19 of whom shall serve without compensation, and a majority of  
20 whom shall constitute a quorum. The Treasurer shall serve as  
21 chairperson of the committee. A majority of the committee may  
22 act for the committee.

23 (c) For purposes of this article, the Voting Modernization  
24 Finance Committee is “the committee” as that term is used in the  
25 State General Obligation Bond Law.

26 SEC. 52. Section 19234 of the Elections Code is amended and  
27 renumbered to read:

28 19254. (a) The committee may create a debt or debts, liability  
29 or liabilities, of the State of California, in the aggregate amount  
30 of not more than two hundred million dollars (\$200,000,000),  
31 exclusive of refunding bonds, in the manner provided herein for  
32 the purpose of creating a fund to assist counties in the purchase of  
33 updated voting systems.

34 (b) The proceeds of bonds issued and sold pursuant to this article  
35 shall be deposited in the Voting Modernization Fund, which is  
36 hereby established.

37 (c) A county is eligible to apply to the board for fund money if  
38 it meets all of the following requirements:

1 (1) The county has purchased a new voting system after January  
2 1, 1999, and is continuing to make payments on that system on  
3 the date that this article becomes effective.

4 (2) The county matches fund moneys at a ratio of one dollar  
5 (\$1) of county moneys for every three dollars (\$3) of fund moneys.

6 (3) The county has not previously requested fund money for  
7 the purchase of a new voting system. Applications for expansion  
8 of an existing system or components related to a previously  
9 certified or conditionally approved application shall be accepted.

10 (d) (1) Fund moneys shall only be used to purchase systems  
11 certified or conditionally approved by the Secretary of State.

12 ~~(2) A county may contract and use fund moneys for the~~  
13 ~~development, prototyping, and manufacturing of a voting system~~  
14 ~~if the system is to be publicly owned and uses nonproprietary~~  
15 ~~software. Fund moneys used for the development, prototyping,~~  
16 ~~and manufacturing of a voting system shall be conditioned on the~~  
17 ~~future certification of the voting system by the Secretary of State.~~  
18 ~~If the voting system does not receive certification by the Secretary~~  
19 ~~of State, the county shall repay the fund moneys to the board.~~

20 (2) *A county may use fund moneys to contract and pay for the*  
21 *following:*

22 (A) *Research and development of a new voting system that has*  
23 *not been certified or conditionally approved by the Secretary of*  
24 *State and uses only nonproprietary software and firmware with*  
25 *disclosed source code, except for unmodified commercial*  
26 *off-the-shelf software and firmware, as defined in paragraph (1)*  
27 *of subdivision (a) of Section 19209.*

28 (B) *Manufacture of the minimum number of voting system units*  
29 *reasonably necessary for either of the following purposes:*

30 (i) *To test and seek certification or conditional approval for the*  
31 *voting system pursuant to Sections 19210 to 19214, inclusive.*

32 (ii) *To test and demonstrate the capabilities of the voting system*  
33 *in a pilot program pursuant to paragraph (2) of subdivision (b)*  
34 *of, and subdivision (c) of, Section 19209.*

35 (3) Fund moneys shall not be used to purchase a voting system  
36 that uses prescored punch card ballots.

37 (e) Any voting system purchased using bond funds that does  
38 not require a voter to directly mark on the ballot must produce, at  
39 the time the voter votes his or her ballot or at the time the polls  
40 are closed, a paper version or representation of the voted ballot or

1 of all the ballots cast on a unit of the voting system. The paper  
2 version shall not be provided to the voter but shall be retained by  
3 elections officials for use during the 1 percent manual recount or  
4 other recount, audit, or contest.

5 SEC. 53. Section 19234.5 of the Elections Code is amended  
6 and renumbered to read:

7 19255. The Legislature may amend subdivisions (c) and (d)  
8 of Section 19254 and Section 19256 by a statute, passed in each  
9 house of the Legislature by rollcall vote entered in the respective  
10 journals, by not less than two-thirds of the membership in each  
11 house concurring, if the statute is consistent with, and furthers the  
12 purposes of, this article.

13 SEC. 54. Section 19235 of the Elections Code is amended and  
14 renumbered to read:

15 19256. The Voting Modernization Board is hereby established  
16 and designated the “board” for purposes of the State General  
17 Obligation Bond Law, and for purposes of administering the Voting  
18 Modernization Fund. The board consists of five members, three  
19 selected by the Governor and two selected by the Secretary of  
20 State. The board shall have the authority to reject any application  
21 for fund money it deems inappropriate, excessive, or that does not  
22 comply with the intent of this article. A county whose application  
23 is rejected shall be allowed to submit an amended application.

24 SEC. 55. Section 19236 of the Elections Code is amended and  
25 renumbered to read:

26 19257. (a) All bonds authorized by this article, when duly sold  
27 and delivered as provided herein, constitute valid and legally  
28 binding general obligations of the State of California, and the full  
29 faith and credit of the state is hereby pledged for the punctual  
30 payment of both principal and interest thereof. The bonds issued  
31 pursuant to this article shall be repaid within 10 years from the  
32 date they are issued.

33 (b) There shall be collected annually, in the same manner and  
34 at the same time as other state revenue is collected, a sum of  
35 money, in addition to the ordinary revenues of the state, sufficient  
36 to pay the principal of, and interest on, the bonds as provided  
37 herein. All officers required by law to perform any duty in regard  
38 to the collection of state revenues shall collect this additional sum.

39 (c) On the dates on which funds are remitted pursuant to Section  
40 16676 of the Government Code for the payment of the then

1 maturing principal of, and interest on, the bonds in each fiscal  
2 year, there shall be returned to the General Fund all of the money  
3 in the fund, not in excess of the principal of, and interest on, any  
4 bonds then due and payable. If the money so returned on the  
5 remittance dates is less than the principal and interest then due and  
6 payable, the balance remaining unpaid shall be returned to the  
7 General Fund out of the fund as soon as it shall become available,  
8 together with interest thereon from the dates of maturity until  
9 returned, at the same rate of interest as borne by the bonds,  
10 compounded semiannually. This subdivision does not grant any  
11 lien on the fund or the moneys therein to holders of any bonds  
12 issued under this article. However, this subdivision shall not apply  
13 in the case of any debt service that is payable from the proceeds  
14 of any refunding bonds. For purposes of this subdivision, “debt  
15 service” means the principal (whether due at maturity, by  
16 redemption, or acceleration), premium, if any, or interest payable  
17 on any date to any series of bonds.

18 SEC. 56. Section 19237 of the Elections Code is amended and  
19 renumbered to read:

20 19258. Notwithstanding Section 13340 of the Government  
21 Code, there is hereby continuously appropriated from the General  
22 Fund, for purposes of this article, a sum of money that will equal  
23 both of the following:

24 (a) That sum annually necessary to pay the principal of, and the  
25 interest on, the bonds issued and sold as provided herein, as that  
26 principal and interest become due and payable.

27 (b) That sum necessary to carry out Section 19259, appropriated  
28 without regard to fiscal years.

29 SEC. 57. Section 19238 of the Elections Code is amended and  
30 renumbered to read:

31 19259. For purposes of this article, the Director of Finance  
32 may, by executive order, authorize the withdrawal from the General  
33 Fund of a sum of money not to exceed the amount of the unsold  
34 bonds that have been authorized by the committee to be sold  
35 pursuant to this article. Any sums withdrawn shall be deposited  
36 in the fund. All moneys made available under this section to the  
37 board shall be returned by the board to the General Fund, plus the  
38 interest that the amounts would have earned in the Pooled Money  
39 Investment Account, from the sale of bonds for the purpose of  
40 carrying out this article.

1 SEC. 58. Section 19239 of the Elections Code is amended and  
2 renumbered to read:

3 19260. The board may request the Pooled Money Investment  
4 Board to make a loan from the Pooled Money Investment Account,  
5 in accordance with Section 16312 of the Government Code, for  
6 the purpose of carrying out this article. The amount of the request  
7 shall not exceed the amount of unsold bonds which the committee  
8 has, by resolution, authorized to be sold for the purpose of carrying  
9 out this article. The board shall execute whatever documents are  
10 required by the Pooled Money Investment Board to obtain and  
11 repay the loan. Any amounts loaned shall be deposited in the fund  
12 to be allocated by the board in accordance with this article.

13 SEC. 59. Section 19240 of the Elections Code is amended and  
14 renumbered to read:

15 19261. Upon request of the board, supported by a statement  
16 of its plans and projects approved by the Governor, the committee  
17 shall determine whether to issue any bonds authorized under this  
18 article in order to carry out the board's plans and projects and, if  
19 so, the amount of bonds to be issued and sold. Successive issues  
20 of bonds may be authorized and sold to carry out these plans and  
21 projects progressively, and it is not necessary that all of the bonds  
22 be issued or sold at any one time.

23 SEC. 60. Section 19241 of the Elections Code is amended and  
24 renumbered to read:

25 19262. (a) The committee may authorize the Treasurer to sell  
26 all or any part of the bonds authorized by this article at the time  
27 or times established by the Treasurer.

28 (b) Whenever the committee deems it necessary for an effective  
29 sale of the bonds, the committee may authorize the Treasurer to  
30 sell any issue of bonds at less than their par value, notwithstanding  
31 Section 16754 of the Government Code. However, the discount  
32 on the bonds shall not exceed 3 percent of the par value thereof.

33 SEC. 61. Section 19242 of the Elections Code is amended and  
34 renumbered to read:

35 19263. Out of the first money realized from the sale of bonds  
36 as provided by this article, there shall be redeposited in the General  
37 Obligation Bond Expense Revolving Fund, established by Section  
38 16724.5 of the Government Code, the amount of all expenditures  
39 made for purposes specified in that section, and this money may

1 be used for the same purpose and repaid in the same manner  
2 whenever additional bond sales are made.

3 SEC. 62. Section 19243 of the Elections Code is amended and  
4 renumbered to read:

5 19264. Any bonds issued and sold pursuant to this article may  
6 be refunded in accordance with Article 6 (commencing with  
7 Section 16780) of Chapter 4 of Part 3 of Division 2 of Title 2 of  
8 the Government Code. The approval of the voters for the issuance  
9 of bonds under this article includes approval for the issuance of  
10 bonds issued to refund bonds originally issued or any previously  
11 issued refunding bonds.

12 SEC. 63. Section 19244 of the Elections Code is amended and  
13 renumbered to read:

14 19265. Notwithstanding any provision of the bond act, if the  
15 Treasurer sells bonds under this article for which bond counsel  
16 has issued an opinion to the effect that the interest on the bonds is  
17 excludable from gross income for purposes of federal income tax,  
18 subject to any conditions which may be designated, the Treasurer  
19 may establish separate accounts for the investment of bond  
20 proceeds and for the earnings on those proceeds, and may use those  
21 proceeds or earnings to pay any rebate, penalty, or other payment  
22 required by federal law or take any other action with respect to the  
23 investment and use of bond proceeds required or permitted under  
24 federal law necessary to maintain the tax-exempt status of the  
25 bonds or to obtain any other advantage under federal law on behalf  
26 of the funds of this state.

27 SEC. 64. Section 19245 of the Elections Code is amended and  
28 renumbered to read:

29 19266. The Legislature hereby finds and declares that,  
30 inasmuch as the proceeds from the sale of bonds authorized by  
31 this article are not “proceeds of taxes” as that term is used in Article  
32 XIII B of the California Constitution, the disbursement of these  
33 proceeds is not subject to the limitations imposed by Article XIII B.

34 SEC. 65. The heading of Article 4 (commencing with Section  
35 19250) of Chapter 3 of Division 19 of the Elections Code is  
36 amended and renumbered to read:

37  
38 Article 6. Direct Recording Electronic Voting Systems  
39



1 SEC. 66. Section 19250 of the Elections Code is amended and  
2 renumbered to read:

3 19270. (a) The Secretary of State shall not certify or  
4 conditionally approve a direct recording electronic voting system  
5 unless the system includes an accessible voter verified paper audit  
6 trail.

7 (b) On and after January 1, 2006, a city or county shall not  
8 contract for or purchase a direct recording electronic voting system  
9 unless the system has been certified or conditionally approved for  
10 use by the Secretary of State.

11 (c) As of January 1, 2006, all direct recording electronic voting  
12 systems in use on that date, regardless of the date it was contracted  
13 for or purchased, shall have received federal qualification and  
14 include an accessible voter verified paper audit trail. If the direct  
15 recording electronic voting system does not include an accessible  
16 voter verified paper audit trail, the system shall be replaced or  
17 modified to include an accessible voter verified paper audit trail.

18 (d) All direct recording electronic voting systems shall include  
19 a method by which a voter may electronically verify, through a  
20 nonvisual method, the information that is contained on the paper  
21 record copy of that voter's ballot.

22 (e) A paper record copy that is printed by a voter verified paper  
23 audit trail component shall be printed in the same language that  
24 the voter used when casting his or her ballot on the direct recording  
25 electronic voting system. For languages that lack a written form,  
26 the paper record copy shall be printed in English.

27 SEC. 67. Section 19251 of the Elections Code is amended and  
28 renumbered to read:

29 19271. As used in this article:

30 (a) "Accessible" means that the information provided on the  
31 paper record copy from the voter verified paper audit trail  
32 mechanism is provided or conveyed to voters via both a visual and  
33 a nonvisual method, such as through an audio component.

34 (b) "Direct recording electronic voting system" means a voting  
35 system that records a vote electronically and does not require or  
36 permit the voter to record his or her vote directly onto a tangible  
37 ballot.

38 (c) "Voter verified paper audit trail" means a component of a  
39 direct recording electronic voting system that prints a  
40 contemporaneous paper record copy of each electronic ballot and

1 allows each voter to confirm his or her selections before the voter  
2 casts his or her ballot.

3 (d) “Federal qualification” means the system has been certified,  
4 if applicable, by means of qualification testing by a nationally  
5 recognized test laboratory and has met or exceeded the minimum  
6 requirements set forth in the Performance and Text Standards for  
7 Punch Card, Mark Sense, and Direct Recording Electronic Voting  
8 Systems, or in any successor voluntary standard document,  
9 developed and promulgated by the Federal Election Commission,  
10 the Election Assistance Commission, or the National Institute of  
11 Standards and Technology.

12 (e) “Paper record copy” means an auditable document printed  
13 by a voter verified paper audit trail component that corresponds  
14 to the voter’s electronic vote and lists the contests on the ballot  
15 and the voter’s selections for those contests. A paper record copy  
16 is not a ballot.

17 (f) “Parallel monitoring” means the testing of a randomly  
18 selected sampling of voting equipment on election day designed  
19 to simulate actual election conditions to confirm that the system  
20 is registering votes accurately.

21 SEC. 68. Section 19252 of the Elections Code is amended and  
22 renumbered to read:

23 19272. To the extent that they are available for expenditure  
24 for the purposes of this article, federal funds or moneys from the  
25 Voting Modernization Fund, created pursuant to subdivision (b)  
26 of Section 19254, shall be used. No moneys from the General Fund  
27 shall be expended for the purposes of this article.

28 SEC. 69. Section 19253 of the Elections Code is amended and  
29 renumbered to read:

30 19273. (a) On a direct recording electronic voting system, the  
31 electronic record of each vote shall be considered the official record  
32 of the vote, except as provided in subdivision (b).

33 (b) (1) The voter verified paper audit trail shall be considered  
34 the official paper audit record and shall be used for the required  
35 1-percent manual tally described in Section 15360 and any full  
36 recount or post-election audit.

37 (2) The voter verified paper audit trail shall govern if there is  
38 any difference between it and the electronic record during a  
39 1-percent manual tally, full recount, or post-election audit.

1 SEC. 70. Section 19254 of the Elections Code is amended and  
2 renumbered to read:

3 19274. The Secretary of State shall not certify or conditionally  
4 approve a direct recording electronic voting system unless the  
5 paper used for its voter verified paper audit trail is of sufficient  
6 quality that it maintains its integrity and readability throughout  
7 the retention period specified in Chapter 4 (commencing with  
8 Section 17300) of Division 17.

9 SEC. 71. Section 19255 of the Elections Code is amended and  
10 renumbered to read:

11 19275. (a) For each statewide election, the Secretary of State  
12 shall conduct parallel monitoring of each direct recording electronic  
13 voting system on which ballots will be cast. This section shall only  
14 apply to precincts that have more than one direct recording  
15 electronic voting system.

16 (b) The results of the parallel monitoring shall be made available  
17 prior to the certification of the election.

18 SEC. 72. The heading of Chapter 3.5 (commencing with  
19 Section 19260) of Division 19 of the Elections Code is amended  
20 to read:

21  
22 CHAPTER 3.5. CERTIFICATION OF BALLOT MARKING SYSTEMS  
23

24 SEC. 73. Section 19260 of the Elections Code is amended and  
25 renumbered to read:

26 19280. The Secretary of State shall not certify or conditionally  
27 approve a ballot marking system, or part of a ballot marking  
28 system, unless it fulfills the requirements of this code and the  
29 regulations of the Secretary of State.

30 SEC. 74. Section 19261 of the Elections Code is amended and  
31 renumbered to read:

32 19281. (a) A ballot marking system, in whole or in part, shall  
33 not be used unless it has been certified or conditionally approved  
34 by the Secretary of State prior to the election at which it is to be  
35 first used.

36 (b) All other uses of a ballot marking system shall be subject  
37 to the provisions of Section 19202.

38 SEC. 75. Section 19262 of the Elections Code is amended and  
39 renumbered to read:

1 19284. (a) A person, corporation, or public agency owning or  
2 having an interest in the sale or acquisition of a ballot marking  
3 system or a part of a ballot marking system may apply to the  
4 Secretary of State for certification or conditional approval that  
5 includes testing and examination of the applicant's system and a  
6 report on the findings, which shall include the accuracy and  
7 efficiency of the ballot marking system. As part of its application,  
8 the applicant of a ballot marking system or a part of a ballot  
9 marking system shall notify the Secretary of State in writing of  
10 any known defect, fault, or failure of the version of the hardware,  
11 software, or firmware of the ballot marking system or a part of the  
12 ballot marking system submitted. The Secretary of State shall not  
13 begin his or her certification process until he or she receives a  
14 completed application from the applicant of the ballot marking  
15 system or a part of the ballot marking system. The applicant shall  
16 also notify the Secretary of State in writing of any defect, fault, or  
17 failure of the version of the hardware, software, or firmware of  
18 the ballot marking system or a part of the ballot marking system  
19 submitted that is discovered after the application is submitted and  
20 before the Secretary of State submits the report required by Section  
21 19288. The Secretary of State shall complete his or her examination  
22 without undue delay.

23 (b) After receiving an applicant's written notification of a defect,  
24 fault, or failure, the Secretary of State shall notify the United States  
25 Election Assistance Commission or its successor entity of the  
26 problem as soon as practicable so as to present a reasonably  
27 complete description of the problem. The Secretary of State shall  
28 subsequently submit a report regarding the problem to the United  
29 States Election Assistance Commission or its successor entity. The  
30 report shall include any report regarding the problem submitted  
31 to the Secretary of State by the applicant.

32 (c) As used in this chapter:

33 (1) "Defect" means any flaw in the hardware or documentation  
34 of a ~~certified or conditionally approved~~ ballot marking system that  
35 could result in a state of unfitness for use or nonconformance to  
36 the manufacturer's specifications or applicable law.

37 (2) "Failure" means a discrepancy between the external results  
38 of the operation of any software or firmware in a ~~certified or~~  
39 ~~conditionally approved~~ ballot marking system and the

1 manufacturer's product requirements for that software or firmware  
2 or applicable law.

3 (3) "Fault" means a step, process, or data definition in any  
4 software or firmware in a ~~certified or conditionally approved~~ ballot  
5 marking system that is incorrect under the manufacturer's program  
6 specification or applicable law.

7 SEC. 76. Section 19263 of the Elections Code is amended and  
8 renumbered to read:

9 19285. The Secretary of State shall use a state-approved testing  
10 agency or expert technicians to examine ballot marking systems  
11 proposed for use or sale in this state. He or she shall furnish a  
12 complete report of the findings of the examination and testing to  
13 the Governor and the Attorney General.

14 SEC. 77. Section 19264 of the Elections Code is amended and  
15 renumbered to read:

16 19287. (a) Prior to publishing his or her decision to certify,  
17 conditionally approve, or withhold certification of a ballot marking  
18 system, the Secretary of State shall provide for a 30-day public  
19 review period and conduct a public hearing to give interested  
20 persons an opportunity to review testing and examination reports  
21 and express their views for or against certification or conditional  
22 approval of the ballot marking system.

23 (b) The Secretary of State shall give notice of the public review  
24 period and hearing in the manner prescribed in Section 6064 of  
25 the Government Code in a newspaper of general circulation  
26 published in Sacramento County. The Secretary of State shall also  
27 provide notice of the hearing on his or her Internet Web site. The  
28 Secretary of State shall transmit written notice of the hearing, at  
29 least ~~30~~ 14 days prior to the public review period and hearing, to  
30 each county elections official, to any person that the Secretary of  
31 State believes will be interested in the public review period and  
32 hearing, and to any person who requests, in writing, notice of the  
33 public review period and hearing.

34 (c) The decision of the Secretary of State to certify, conditionally  
35 approve, or withhold certification of a ballot marking system shall  
36 be in writing and shall state the findings of the Secretary of State.  
37 The decision shall be open to public inspection.

38 SEC. 78. Section 19265 of the Elections Code is repealed.

39 SEC. 79. Section 19266 of the Elections Code is repealed.

1 SEC. 80. Section 19267 of the Elections Code is amended and  
2 renumbered to read:

3 19288. Within 60 days after the completion of the examination  
4 of a ballot marking system, the Secretary of State shall make  
5 publicly available a report stating whether the ballot marking  
6 system has been certified or conditionally approved, or whether  
7 certification has been withheld.

8 SEC. 81. Section 19268 of the Elections Code is repealed.

9 SEC. 82. Section 19269 of the Elections Code is amended and  
10 renumbered to read:

11 19289. Within 10 days after issuing and filing a certification  
12 decision and associated testing reports, the Secretary of State shall  
13 make available to the public a full and complete copy of the  
14 certification report and all associated documentation, except that  
15 portions of the report or documentation that contain information  
16 that the Secretary of State determines to be confidential or  
17 proprietary shall not be made publicly available. The Secretary of  
18 State shall notify the board of supervisors and elections official of  
19 each county of the availability of the report and associated  
20 documentation.

21 SEC. 83. Section 19270 of the Elections Code is amended and  
22 renumbered to read:

23 19290. (a) If a ballot marking system has been certified or  
24 conditionally approved by the Secretary of State, the vendor or  
25 ~~proprietor county~~, in cases where the system is publicly owned,  
26 *the jurisdiction* shall notify the Secretary of State and all local  
27 elections officials who use the system in writing of any defect,  
28 fault, or failure of the hardware, software, or firmware of the  
29 system or a part of the system within 30 calendar days after the  
30 vendor *or jurisdiction* learns of the defect, fault, or failure.

31 (b) After receiving written notification of a defect, fault, or  
32 failure pursuant to subdivision (a), the Secretary of State shall  
33 notify the United States Election Assistance Commission or its  
34 successor entity of the problem as soon as practicable so as to  
35 present a reasonably complete description of the problem. The  
36 Secretary of State shall subsequently submit a report regarding the  
37 problem to the United States Election Assistance Commission or  
38 its successor entity. The report shall include any report regarding  
39 the problem submitted to the Secretary of State.

1 SEC. 84. Section 19271 of the Elections Code is amended and  
2 renumbered to read:

3 19291. If a ballot marking system has been certified or  
4 conditionally approved by the Secretary of State, it shall not be  
5 changed or modified until the Secretary of State has been notified  
6 in writing and has determined that the change or modification does  
7 not impair its accuracy and efficiency sufficient to require a  
8 reexamination and recertification or reapproval pursuant to this  
9 chapter. The Secretary of State may adopt rules and regulations  
10 governing the procedures to be followed in making his or her  
11 determination as to whether the change or modification impairs  
12 accuracy or efficiency.

13 SEC. 85. Section 19272 of the Elections Code is amended and  
14 renumbered to read:

15 19292. The Secretary of State may seek injunctive and  
16 administrative relief if a ballot marking system has been  
17 compromised by the addition or deletion of hardware, software,  
18 or firmware without prior approval or is defective due to a known  
19 hardware, software, or firmware defect, fault, or failure that has  
20 not been disclosed pursuant to Section 19284 or 19290.

21 SEC. 86. Section 19273 of the Elections Code is amended and  
22 renumbered to read:

23 19293. (a) The Secretary of State may seek all of the following  
24 relief for an unauthorized change in hardware, software, or  
25 firmware in a ballot marking system certified or conditionally  
26 approved in California:

27 (1) A civil penalty from the offending party or parties, not to  
28 exceed ten thousand dollars (\$10,000) per violation. For purposes  
29 of this subdivision, each ballot marking system component found  
30 to contain the unauthorized hardware, software, or firmware shall  
31 be considered a separate violation. A penalty imposed pursuant to  
32 this subdivision shall be apportioned 50 percent to the county in  
33 which the violation occurred, if applicable, and 50 percent to the  
34 office of the Secretary of State for purposes of bolstering ballot  
35 marking system security efforts.

36 (2) Immediate commencement of proceedings to withdraw  
37 certification or conditional approval for the ballot marking system  
38 in question.

1 (3) Prohibiting the manufacturer or vendor of a ballot marking  
2 system from doing elections-related business in the state for one,  
3 two, or three years.

4 (4) Refund of all moneys paid by a local agency for a ballot  
5 marking system or a part of a ballot marking system that is  
6 compromised by an unauthorized change or modification, whether  
7 or not the ballot marking system has been used in an election.

8 (5) Any other remedial actions authorized by law to prevent  
9 unjust enrichment of the offending party.

10 (b) (1) The Secretary of State may seek all of the following  
11 relief for a known but undisclosed defect, fault, or failure in a  
12 ballot marking system or part of a ballot marking system certified  
13 or conditionally approved in California:

14 (A) Refund of all moneys paid by a local agency for a ballot  
15 marking system or part of a ballot marking system that is defective  
16 due to a known but undisclosed defect, fault, or failure, whether  
17 or not the ballot marking system has been used in an election.

18 (B) A civil penalty from the offending party or parties, not to  
19 exceed fifty thousand dollars (\$50,000) per violation. For purposes  
20 of this subdivision, each defect, fault, or failure shall be considered  
21 a separate violation. A defect, fault, or failure constitutes a single  
22 violation regardless of the number of ballot marking system units  
23 in which the defect, fault, or failure is found.

24 (C) In addition to any other penalties or remedies established  
25 by this section, the offending party or parties shall be liable in the  
26 amount of one thousand dollars (\$1,000) per day after the  
27 applicable deadline established in Section 19290 until the required  
28 disclosure is filed with the Secretary of State.

29 (2) A penalty imposed pursuant to subparagraph (B) or (C) of  
30 paragraph (1) shall be deposited in the General Fund.

31 (c) Before seeking any measure of relief under this section, the  
32 Secretary of State shall hold a public hearing. The Secretary of  
33 State shall give notice of the hearing in the manner prescribed by  
34 Section 6064 of the Government Code in a newspaper of general  
35 circulation published in Sacramento County. The Secretary of  
36 State also shall transmit written notice of the hearing, at least 30  
37 days prior to the hearing, to each county elections official, the  
38 offending party or parties, any persons that the Secretary of State  
39 believes will be interested in the hearing, and any persons who  
40 request, in writing, notice of the hearing.



1 (d) The decision of the Secretary of State to seek relief under  
2 this section shall be in writing and state his or her findings. The  
3 decision shall be open to public inspection.

4 SEC. 87. Section 19274 of the Elections Code is amended and  
5 renumbered to read:

6 19294. (a) The Secretary of State may seek injunctive relief  
7 requiring an elections official, or any vendor or manufacturer of  
8 a ballot marking system, to comply with the requirements of this  
9 code, the regulations of the Secretary of State, and the  
10 specifications for the ballot marking system and its software,  
11 including the programs and procedures for vote marking and  
12 testing.

13 (b) Venue for a proceeding under this section shall be  
14 exclusively in Sacramento County.

15 SEC. 88. Section 19275 of the Elections Code is amended and  
16 renumbered to read:

17 19295. A ballot marking system or part of a ballot marking  
18 system shall not do any of the following:

19 (a) Have the capability, including an optional capability, to use  
20 a remote server to mark a voter's selections transmitted to the  
21 server from the voter's computer via the Internet.

22 (b) Have the capability, including an optional capability, to store  
23 any voter identifiable selections on any remote server.

24 (c) Have the capability, including the optional capability, to  
25 tabulate votes.

26 SEC. 89. Section 19282 is added to the Elections Code, to read:

27 19282. The Secretary of State shall not certify or conditionally  
28 approve any ballot marking system that includes features that  
29 permit a voter to produce, and leave the polling place with, a copy  
30 or facsimile of the ballot cast by the voter at that polling place.

31 SEC. 90. Section 19283 is added to the Elections Code, to read:

32 19283. (a) The Secretary of State shall adopt and publish  
33 standards and regulations governing the use of ballot marking  
34 systems. The Secretary of State may also adopt, in whole or in  
35 part, voluntary federal *ballot marking* voting system standards  
36 established by the United States Election Assistance Commission  
37 or its successor agency.

38 (b) Ballot marking system standards adopted by the Secretary  
39 of State pursuant to subdivision (a) shall include, but not be limited  
40 to, all of the following requirements:

1 (1) The machine or device and its software shall be suitable for  
2 the purpose for which it is intended.

3 (2) The ballot marking system shall preserve the secrecy of the  
4 ballot.

5 (3) The ballot marking system shall be safe from fraud or  
6 manipulation.

7 (4) The ballot marking system shall be accessible to voters with  
8 disabilities and to voters who require assistance in a language other  
9 than English if the language is one in which a ballot or ballot  
10 materials are required to be made available to voters.

11 SEC. 91. Section 19286 is added to the Elections Code, to read:

12 19286. The person, corporation, or public agency applying for  
13 certification of a ballot marking system is responsible for all costs  
14 associated with the testing and examination of the ballot marking  
15 system.